

EXHIBIT H

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

THOMAS A. EAMES, ROBERTA)
L. EAMES, and TAMMY EAMES,)
on behalf of themselves)
and all others similarly)
situated,)
)
Plaintiff,)
) C.A. No. 04-1324 KAJ
v.)
)
NATIONWIDE MUTUAL)
INSURANCE COMPANY,)
)
Defendant.)

Wednesday, December 14, 2005
10:44 a.m.

222 Delaware Avenue, 10th Floor
Wilmington, Delaware

BEFORE: SPECIAL MASTER JAMES W. SEMPLE
Special Discovery Master

APPEARANCES:

JOHN S. SPADARO, ESQ.
MURPHY, SPADARO & LANDON
1011 Centre Road, Suite 210
Wilmington, Delaware 19805
for the Plaintiffs

CURTIS P. CHEYNEY, III, ESQ.
SWARTZ, CAMPBELL
1601 Market Street, 34th Floor
Philadelphia, Pennsylvania 19103-2316
for the Defendant

Hawkins Reporting Service
715 North King Street - Wilmington, Delaware 19801
(302) 658-6697

1 insurance commissioner.

2 MR. CHEYNEY: Correct.

3 SPECIAL MASTER SEMPLE: And have you
4 produced any other documents from Nationwide
5 which would show the etymology of the Nationwide
6 Form A other than the insurance commissioner's
7 Form A?

8 MR. CHEYNEY: No.

9 SPECIAL MASTER SEMPLE: Have you
10 searched for such documents?

11 MR. CHEYNEY: Yes.

12 SPECIAL MASTER SEMPLE: And can you
13 tell me what -- what have you searched and where
14 have you searched?

15 MR. CHEYNEY: We have searched all
16 the Delaware agents' Email files. We have
17 searched the Delaware, which includes Delaware,
18 Maryland and all of the management-level people
19 who report to the Delaware agents.

20 SPECIAL MASTER SEMPLE: Okay. Let
21 me just stop you right there.

22 What does that mean, Delaware Email
23 files?

24 MR. CHEYNEY: The Emails of every

1 agent who has a lease with us of an Email system.

2 We have in our server the ability to search their
3 Emails for words full, PIP, any relation to that.

4 We also searched the state
5 management-level employees, which include
6 employees who have management-level
7 responsibility beyond Delaware and are not
8 situated only in Delaware.

9 We've searched Board of Directors'
10 records back to 1973, again, for any reference to
11 the word PIP, personal injury protection, full,
12 full PIP. I forget all we've expanded on.

13 But anything that would possibly
14 relate to the request, we have put a search in
15 for. We have found a number of documents that
16 meet that general description where those words
17 are in there, including false words like fully,
18 or beautiful, or something that would have a word
19 in it that we had to screen out.

20 SPECIAL MASTER SEMPLE: How many
21 documents -- if you know, how many documents were
22 identified as a result of those searches?

23 MR. CHEYNEY: Do you mind if I --

24 MR. MARINO: No.

1 in the record or in the docket as opposed to
2 saying something in the transcript?

3 MR. SPADARO: There are bench
4 rulings in the transcript alone. There aren't
5 written orders, but they are orders of the Court.

6 Judge Jordan has ordered specific
7 action, and he's made specific legal rulings.
8 And he overruled their relevance objection and
9 they've raised it again.

10 They've raised it again at this
11 hearing. But they raised it again in the meet an
12 confer with me. That's a violation of the order.

13 Judge Jordan ordered them, and he
14 said, of this October 3rd meeting, he said,
15 "Don't have a meeting where he's got questions
16 without having the people there who can answer
17 them."

18 Those questions they did not answer.
19 It's not one question. And they're not
20 insignificant.

21 It's all the questions, the bundle
22 of questions at Number 6 and 8 of Exhibit P.
23 These are questions like, Do you issue
24 instruction or guidance to insurance agents

1 regarding the content of these forms? Who does
2 that?

3 Where would those documents be? I
4 told them in advance, you're not -- you're
5 disobeying the Judge's direct order. You're not
6 bringing the people to that meeting.

7 And they didn't -- and we're not
8 going to bring him any way. That's a violation
9 of the order.

10 SPECIAL MASTER SEMPLE: I
11 understand. But why didn't you file 30(b)6
12 depositions to get more clearly defined answers
13 to who knows what, what documents exist, and
14 where are they located?

15 MR. SPADARO: Again, Your Honor, I
16 think strategically, and it's a matter of
17 professional judgment, under the circumstances
18 you want to take that deposition after you get
19 some kind of meaningful production.

20 You don't want to take the
21 deposition before any documents are produced.
22 And generally those custodial depositions aren't
23 taken until -- they're not taken until there's
24 been a custodian, there's been a production.

8 MR. SPADARO: There's nothing
9 prohibiting me from doing it. And it might have
10 had some usefulness in this context. I think
11 there are strategic advantages, because I'm only
12 going to get, as a general matter in Delaware,
13 and under Federal Rules, I'm only going to get
14 one 30(b)6 during the class certification
15 discovery phase.

16 And the second one on the merits, if
17 we get that far. So I made the judgment that I
18 wanted to get their documents first before doing
19 that. That's strategy.

20 Whether I'm subject to criticism for
21 that as a strategic matter does not relieve them
22 of their obligations under Rule 34. They still
23 have to produce the documents.

24 And the upshot, it's not as though

1 no rulings were made on the August 5th
2 teleconference. They were ordered to meet and
3 confer with me in good faith.

4 Within hours, I get a facetious
5 Email from Mr. Cheyney saying, You're not going
6 to get anything. Maybe you should go ask
7 Mr. Munson.

8 That is a violation of the Court's
9 order, because he's not meeting and conferring
10 with good faith. He's being combative, and
11 confrontational, and evasive, and facetious
12 within hours of getting off the phone with the
13 judge. So they violated the October 3rd meeting.

14 I still every day, every day that
15 they don't answer the questions that I was
16 ordered to give them in advance so they could
17 answer them at the meeting, when they were told
18 you will answer these questions at this meeting.
19 Judge Jordan told them, I am ordering you to have
20 the people there.

21 They said, No, we won't have the
22 people there. We'll tell him we'll get back to
23 him. And there was no limitation, you only have
24 to answer technical questions.

1 The judge said, Don't have a meeting
2 where he's got questions, and he's going to give
3 you written questions. I gave it to them in
4 advance of the meeting.

5 They didn't say, Well, you went
6 beyond the Judge's order. These are
7 non-technical questions. We don't have to answer
8 these.

9 That's a violation. It's a
10 continuing violation.

11 Every day they don't answer those
12 questions that Judge Jordan ordered them to
13 answer, it's a continuing violation of that
14 order.

15 The scheduling order says, You will
16 either -- you'll either agree to a protocol for
17 electronic discovery or you'll follow default
18 standards. They didn't even agree that
19 electronic discovery had been asked.

20 I mean, Mr. Cheyney told me, You
21 haven't asked for electronic discovery at the
22 hearing today. He admits, Well, that's not
23 right.

24 And he said he told that to the

1 judge at the August 5th teleconference. Judge
2 Jordan said that that was an almost willful
3 misreading of our discovery.

4 So I couldn't get them. There was
5 not going to be any agreed protocol.

6 He didn't even agree that I asked
7 for electronic discovery. I asked, since there's
8 no protocol or order to follow, default standard.
9 He ignored me for a month. I wrote back a month
10 later.

11 After that, four times I wrote him.
12 I had to go to the Court.

13 You are now on August 5th when Judge
14 Jordan said, You will follow the default
15 standard. Now, you will appoint an E discovery
16 liaison.

17 You will do these things. That
18 wasn't the first order. That was the second
19 order.

20 Because the scheduling order is a
21 written order, and the incorporation by reference
22 to the default standard is a written order and
23 the default standard is written.

24 So they were ordered to do that

1 before and they were ordered to do that after.
2 And they still haven't complied with the default
3 standard.

4 You know, we're still boxed into
5 this leadership team, which Mr. Cheyney referred
6 to. It's the Delaware Leadership Team.

7 We know that they were engaged in
8 this practice outside Delaware for years and
9 years and years. And it's not limited to
10 Delaware.

11 But we're still on this Delaware box
12 that's not complying with the default standard.
13 And there's also the point made that they can
14 argue burden with me, although we've waived the
15 burden objection.

16 Has Your Honor ever heard of that
17 before? I mean, they raise the burden objection
18 on the eve of that teleconference, and they were
19 ordered to produce notwithstanding. They are
20 raising objections, too, that were overruled at
21 that hearing.

22 Really, what they're doing, their
23 prematurity objection was the one that they
24 really thought was their ace in the hole. And